

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In RE:)	
)	
LIBOR-Based Financial Instrument)	11-md-2262 (NRB)
Antitrust Litigation)	
)	
This Document Applies to: All Cases)	
)	
)	
HEATHER M. EARLE, HENRYK)	Case no. 13 civ. 407 (NRB)
MALINOWSKI and LINDA CARR,)	
)	
Plaintiffs,)	
)	
v.)	
)	
BANK OF AMERICA CORP., BANK OF)	
AMERICA, N.A., BANK OF TOKYO –)	
MITSUBISHI UFJ LTD., BARCLAYS)	
BANK PLC, CITIGROUP, INC.,)	
CITIBANK N.A.,)	
CREDIT SUISSE GROUP, AG,)	
COÖPERATIEVE CENTRALE)	
RAIFFEISEN-BOERENLEENBANK B.A.,)	
DEUTSCHE BANK AG, HBOS PLC,)	
HSBC HOLDINGS PLC, HSBC BANK)	
PLC, JPMORGAN CHASE &)	
CO., CHASE BANK USA, N.A., THE)	
NORINCHUKIN BANK, LLOYDS)	
BANKING GROUP PLC, ROYAL BANK)	
OF CANADA, ROYAL BANK OF)	
SCOTLAND and UBS AG,)	
)	
Defendants.)	

**RESPONSE TO PLAINTIFFS CARL A. PAYNE AND KENNETH W. COKER’S
APPLICATION FOR ESTABLISHMENT OF A SEPARATE PUTATIVE CLASS
GROUP IN THE MDL UNDER THE COURT’S JUNE 14, 2012 ORDER**

Plaintiffs Heather M. Earle, Henryk Malinowski and Linda Carr (“Borrower Plaintiffs”) respond to the submission filed by Carl A. Payne and Kenneth W. Coker on February 28, 2013 (ECF No. 266 in 11-md-2262) (the “Payne/Coker Application”).

The Payne/Coker Application improperly seeks to establish a new “Homeowner Class” and the appointment of Messrs. Payne and Coker as interim Lead Plaintiffs and their attorneys, Baron & Budd, P.C., as interim Lead Counsel. This contravenes the Court’s order of August 14, 2012 (ECF No. 205 in 11-md-2262) staying all new actions “that fall within the scope of the multi-district litigation” pending resolution of the extant motions to dismiss. Borrower Plaintiffs therefore request that the Payne/Coker Application for the creation of a new class and the appointment of interim class representatives and class counsel be denied as premature. Should the Court wish to entertain these issues at this time, Borrower Plaintiffs respectfully request the opportunity to respond to the merits of the request.

With respect to Messrs. Payne and Coker’s request for inclusion in 11-md-2262, the Court’s June 14, 2012 Order instructs that “any plaintiff seeking to be joined as a representative of a separate class must file with its pleading an application detailing why the existing classes of plaintiffs do not protect it and why inclusion in the MDL would be appropriate.” *See* ECF No. 152 in 11-md-2262. Although the Payne/Coker Application references one of the actions that has been filed to date regarding borrowers, *Adams, et al. v. Bank of America Corp., et al.*, case no. 12-cv-07461 (S.D.N.Y.), it fails to mention the action filed by Borrower Plaintiffs. *See Earle, et al. v. Bank of America Corp., et al.*, case no. 13-cv-407 (S.D.N.Y.). This action was filed on January 17, 2013, and admitted into the multi-district case, 11-md-2262, on January 31, 2013. It seeks injunctive relief and treble damages under Section 1 of the Sherman Act, 15 U.S.C. § 1, on behalf of the following class (the “Borrower Class”):

All persons and entities throughout the United States who had an adjustable rate loan mortgage or loan indexed to six-month or twelve-month USD LIBOR that was set or adjusted during the period January 2008 through the present.

Thus, to the extent Messrs. Payne and Coker assert claims on behalf of a class of homeowners with adjustable rate mortgages (albeit under a different theory and asserting different causes of action), those individuals are included in the proposed Borrower Class. Borrower Plaintiffs therefore respectfully request that the Payne/Coker Application for inclusion in 11-md-2262 be denied.

Dated: March 1, 2013

Respectfully submitted,

KAPLAN FOX & KILSHEIMER LLP

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